

ENTERED

October 25, 2018

David J. Bradley, Clerk

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

KENDRICK LAVAR ELLIOTT,
(SPN #01877025)

Plaintiff,

vs.

ART ACEVEDO, *et al.*,

Defendants.

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CIVIL ACTION H-18-3801

MEMORANDUM ON DISMISSAL

Kendrick Lavar Elliott, an inmate of the Harris County Jail (“HCJ”), sued in October 2018, alleging civil rights violations resulting from a failure to protect his safety. Elliott seeks leave to proceed in forma pauperis. Elliott, proceeding pro se, sues Art Acevedo, Sheriff of Harris County; and Cynthia K. Randall, a family member.¹

The threshold issue is whether Elliott’s claims should be dismissed as barred by the three-strikes provision of 28 U.S.C. § 1915(g). The Court concludes that Elliott’s claims are barred and should be dismissed for the reasons stated below.

I. Plaintiff’s Allegations

Elliott asserts that Sheriff Acevedo conspired with Defendant Randall to infect Elliott with the common cold virus. He claims that he became ill on June 20, and September 20, 2018.

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Though Elliott identifies Cynthia K. Randall as a family member, he does not clarify whether she is his family member or that of Sheriff Acevedo. From the pleadings, the Court presumes Randall is Elliott’s family member.

Elliott seeks compensatory damages of \$200,000.00.

II. Analysis

A prisoner is not allowed to bring a civil action in forma pauperis in federal court if, while incarcerated, three or more of his civil actions or appeals were dismissed as frivolous or malicious or for failure to state a claim upon which relief may be granted, unless he is in imminent danger of serious physical injury. 28 U.S.C. § 1915(g).

Elliott's litigation history reveals that he has previously submitted abusive and scurrilous filings in federal court. Prior to filing this action, he had at least four suits dismissed as frivolous. *Elliott v. Judge Denise Collins*, 4:17cv3336 (dismissed as frivolous on November 7, 2017)(S.D. Tex.); *Elliott v. President Barack Obama*, 4:17cv1094 (dismissed as frivolous on April 21, 2017)(S.D. Tex.); *Elliott v. Denise Collins*, 4:17cv1056 (dismissed as frivolous on April 19, 2017)(S.D. Tex.); and *Elliott v. Mary L. Keel*, 4:16cv2637 (dismissed as frivolous on September 23, 2016)(S.D. Tex.).

In the present case, Elliott has not alleged, nor does his complaint demonstrate, that he is in imminent danger of serious physical injury. Accordingly, Elliott is barred under 28 U.S.C. § 1915(g) from proceeding in forma pauperis in this action.

III. Conclusion

Elliott's motion to proceed as a pauper, (Docket Entry No. 2), is DENIED. The complaint filed by Kendrick Lavar Elliott, (SPN #01877025), is DISMISSED under 28 U.S.C. § 1915(g).² All

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In *Adepegba v. Hammons*, 103 F.3d 383 (5th Cir. 1998), the Fifth Circuit barred an inmate from proceeding further under the statute, except for cases involving an imminent danger of serious physical injury, and dismissed all of Adepegba's i.f.p. appeals pending in that court. The Fifth Circuit noted that the inmate could resume any claims dismissed under section 1915(g), if he decided to pursue them, under the fee provisions of 28 U.S.C. §§ 1911-14 applicable to everyone else.

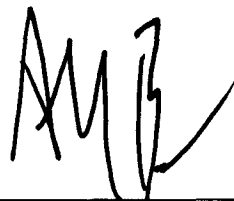
pending motions are DENIED. Elliott is warned that continued frivolous filings may result in the imposition of sanctions.

The Clerk will provide a copy of this order by regular mail, facsimile transmission, or e-mail to:

(1) Thomas Katz, Manager of the Inmate Trust Fund, 1200 Baker Street, Houston, Texas 77002, Fax 713-755-4546; and

(2) the Manager of the Three-Strikes List for the Southern District of Texas at: Three_Strikes@txs.uscourts.gov.

SIGNED at Houston, Texas, on OCT 23 2018.

A handwritten signature in black ink, appearing to read 'AHB', is written over a horizontal line.

ALFRED H. BENNETT
UNITED STATES DISTRICT JUDGE